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THE THIRD UNITED NATIONS CONFERENCE

ON THE LAW OF THE SEA

New York, March 15-May 7, 1976

US Delegation Report

I. Summary of Delegation Report

Following is a summary of the Delegation Report on the New York Session of the Law of the Sea Conference, March 15-May 7, 1976. The detailed Delegation Report on the work of the Main Committees is included.

The fourth session of the Law of the Sea Conference met in New York from March 15 to May 7. The basis of discussion and negotiation was the Single Negotiating Text prepared by the three Chairmen of the Main Committees, and by the President of the Conference with respect to dispute settlement. After virtually complete discussion of these texts at the current session, revisions were released on the last day of the current session. These revisions were prepared by the respective Chairmen, and with respect to dispute settlement, by the President of the Conference, taking into account discussions and negotiations at this session.

On April 8 Secretary Kissinger made a major statement on the LOS negotiations before an American audience which was circulated to all delegations, and then met with the conference officers and the heads of delegation, where he made additional remarks. The Secretary's statement and appearance were widely welcomed as an indication of the high-level United States interest in an early and successful conclusion to the negotiations, and his new proposals regarding the deep seabeds were welcomed as evidence of a real effort to accommodate the interests of developing countries.

The Conference has decided to convene another session in New York from August 2 to September 17. Procedures are likely to emphasize negotiations on important outstanding issues leading to an overall package treaty.

Since the revised Single Negotiating Text were issued on the last day of the session, it is not possible to include an evaluation of them in this report. An initial reading would indicate the following significant points.

State Dept. review completed

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COMMITTEE I

The new text contains refined ideas with respect to an accommodation of the interests of developing countries, industrialized countries, consumers, and producers. In particular it specifies conditions under which States and their nationals would have access to the exploration and exploitation of deep seabed minerals, the control of the Authority in this regard, and establishes a system under which prime mining sites would be reserved for exploitation by the "Enterprise" (the exploitation arm of the Authority) and developing countries. It also contains specific provisions, including an interim production limit, to protect developing country land-based producers of metals also produced on the seabed. New procedures for the Assembly designed to protect the interests of all concerned are included.

The text specifically notes that the important question of the composition and voting of the Council of the Seabed Authority "has not yet been fully dealt with by the Committee."

COMMITTEE II

No major changes were made in the Committee II text. As specifically noted in the introductory note of the Chairman to the revised text, certain important issues remain to be resolved. These include the question of the high seas status of the economic zone and the question of the access of land-locked and other "geographically disadvantaged" States to living resources of the economic zone. The Chairman's basic approach to the revision of this text is indicated in paragraphs 7, 8 and 9 of his introductory note, which are as follows:

"7. By far the largest category of articles consisted of those to which no amendments commanding other than minimal support were introduced. It was clear that these should be retained as they were in the single negotiating text.

"8. A second group consisted of articles where there was a clear trend favoring the inclusion of a particular amendment or where I was given a mandate to make a change within agreed limits.

"9. A third category consisted of articles dealing with issues which could be identified, on the basis of extensive discussion, as those on which negotiations were most needed.

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My response to these issues varied according to my assessment of the state reached in the negotiations. In certain cases, I felt I could suggest a compromise solution. In other cases I considered that negotiations would be advanced if I were to at least point the way to an eventual solution. In still other cases, I felt that while there may be a need for a change in the Single Negotiating Text, any modifications to the text might prove counterproductive in the search for a solution."

COMMITTEE III

1. Pollution: The major changes relate to vessel-source pollution. They include specific enforcement rights for port States for violations of international discharge regulation regardless of where they occur, and specified enforcement rights for coastal States with respect to discharges in the economic zone in violation of international standards.

2. Scientific research: With respect to marine scientific research, a major change has been made which would require the consent of the coastal State for marine scientific research for activities in the economic zone or on the continental shelf, provided that consent shall not be withheld unless the project bears substantially upon the exploration and exploitation of resources, involves drilling or the use of explosives, unduly interferes with coastal State economic activities in accordance with its jurisdiction, or involves the construction, operation or use of artificial islands, and structures subject to coastal State jurisdiction. The procedures for settlement of disputes are elaborated further in this regard.

SETTLEMENT OF DISPUTES

The new text contains new language on those cases in which the compulsory procedures would apply to disputes in the economic zone. It adopts a formula on procedures which permits a State to choose among the following procedures in cases in which it would be subject to suit: (a) arbitration; (b) the International Court of Justice; (c) a new Law of the Sea Tribunal; or (d) specialized procedures for particular kinds of disputes (although, if (d) is selected, the State must also select a, b, or c for disputes not covered by the specialized procedures).

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II. Committee I (Deep Seabeds)

Committee I completed a review of almost all articles of Part I of the Single Negotiating Text.

Toward the end of the session, the Chairman of Committee I, Paul Engo of the Cameroon, issued as informal conference documents new texts which significantly modified the SNT he had issued in Geneva in 1975. He characterized these texts as his personal assessment of the emerging consensus in the Committee I negotiations. These texts were issued on the last day of the Conference as the Revised Single Negotiating Text, Part I.

A. System of Exploitation and Access to Deep Seabed Resources

The Committee began the session by considering Annex I (Basic Conditions of Prospecting, Exploration and Exploitation) to Part I of the LOS Treaty. This Annex elaborates the mechanism for obtaining contracts, the qualifications and selection of applicants, the rights and obligations under the contract, terms for suspension and revision of contracts, and the scope of the Seabed Authority's rules, regulations, and procedures. It sets forth the objective criteria upon which these rules and regulations must be based.

Annex I supplements the basic provision in the body of the treaty on the system of access (Article 22). This article lies at the heart of the deep seabed negotiations, as it determines the right of access of States and their nationals to the mineral resources.

The system of exploitation included in the new SNT consists of a system in which the Authority, through its operating arm, the Enterprise, may exploit the deep seabed directly or exploitation may be carried out pursuant to contracts concluded with the Authority in accordance with Annex I by member States or their nationals.

Annex I elaborates a new system of revenue sharing between the contractor and the Authority. The Committee did not complete its consideration of this issue. As a result, a formula including precise figures were not negotiated. The revised Annex provides two alternative formulas: one is

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based on a revenue sharing scheme widely used which includes a grace period from payments followed by a sliding scale based on profits or an alternative royalty system utilized at the discretion of the operator. A second alternative formula provides for revenue sharing or royalties at the discretion of the Authority.

#### B. Economic Implications

Committee I has for many years questioned the economic effect deep seabed mining may have on developing country land-based producers of manganese, copper, nickel and cobalt. A number of these land-based producers have attempted in the negotiations to provide protection for their countries by giving the Authority the power to control directly price and production of these metals mined from the seabed. The U.S. and a number of other countries have strongly opposed giving the Authority the power to control prices or production. A failure to find a compromise on this issue has been one of the major obstacles to a successful conclusion of the negotiations on seabed issues. The new SNT issued by Engo includes an article (Article 9) which attempts to achieve a compromise on this point. It provides for a 20-year period during which time a production limitation would apply to ensure that ocean mining does not produce more than the projected cumulative growth segment of the nickel market.

#### C. Assembly and Council

Another difficult area in the negotiations has been the delineation of the relative powers and functions of the Assembly and Council of the Authority. The new SNT attempts a balance between these two organs of the Authority. The new Assembly is the supreme organ of the Authority with the power to prescribe general policies by adopting resolutions and making recommendations. The Council is the executive organ of the Authority with the power to prescribe specific policies to be pursued by the Authority.

#### D. Commissions

The new SNT establishes three commissions: the Economic Planning Commission, the Technical Commission and the Rules and Regulations Commission. In addition, there are a number of general and housekeeping articles which were largely agreed upon.

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E. Dispute Settlement System

Most delegations favor a system which includes a permanent organ of the Authority with the power and duty to take final, binding decisions regarding all disputes arising under Part I of the Convention, relating to the conduct of exploration and exploitation. The new SNT reflects this philosophy. However, a few delegations, holding a different view --that all decisions should be made through a system of ad hoc arbitration-- pressed their views strongly and will do so in the next session.

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A number of important issues were debated but only in a preliminary manner during this session and will have to be negotiated in more detail during the next session of the Conference.

F. Provisional Application

One such issue is whether the Law of the Sea Treaty, and particularly Part I, should be applied provisionally before the treaty as a whole enters permanently into force. Some delegations felt that this question can be more appropriately dealt with later or not at all. The majority view, however, supports provisional application of the treaty as a whole while recognizing that this concept may involve certain technical, or juridical difficulties for some States.

G. The Enterprise

A major concern of developing countries is the establishment of a functioning Enterprise which would be the organ of the Authority which would exploit seabed resources directly. During the closing days of the Conference session, a draft Annex II (The Statute of the Enterprise) was circulated. While there was some discussion on this question, the debate was inconclusive and the details remain to be resolved at the next session. The fundamental issue of concern to developed and non-developed countries is how the Enterprise will be financed. The developed countries advocated a system in which the Enterprise could borrow money in capital markets as well as receive a portion of the Authority's revenue sharing funds, while some developing countries urged that there be a mandatory fee levied on all States parties. The Enterprise

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statute and the related articles in the treaty on financing the Authority remain to be settled at a later date.

#### H. Council Voting

The most important issue which was not resolved concerns the composition and voting system in the Council. The U.S. and other developed countries clearly stated that they could not accept the system provided for in the SNT of March 1975. The U.S. in December 1975 proposed amendments which would strengthen this article from our point of view. However, our representatives have made it clear that we are not satisfied with our own amendments to the SNT, and have said that we would propose a new article at the next session. In light of this, Chairman Engo did not hold consultations on this extremely important issue. The SNT contains the text of the Geneva SNT but there is a clear understanding that this issue would be discussed and negotiated at the next session.

#### I. Quota System or Anti-Monopoly Article

Several industrialized countries pressed vigorously for a limit on the number of mines sites or contracts which any one State or its nationals could obtain from the Authority at any given time. This view was resisted with equal vigor by the United States, which explained that there are several hundred prime mine sites and thousands more of good quality for the future. This issue remains as one of the most difficult in the negotiations ahead. The developing countries sidestepped this issue rather than take sides in a dispute among and between developed countries.

#### J. Secretary's Statement

During this session of the Conference, Secretary Kissinger made a statement (April 8 before the Foreign Police Association) in which he outlined the major remaining issues that had to be resolved in the LOS negotiations, citing specifically the difficult problems in Committee I. Secretary Kissinger outlined the compromise package proposal as an effort to bridge differences in the negotiations. This speech was regarded as an important contribution to achieving an atmosphere of accommodation.

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III. Committee II (Territorial seas, Straits, the Economic Zone, the Continental Shelf, High Seas, Archipelagoes, Land-locked States, Islands, and Enclosed and Semi-enclosed Seas)

The work of Committee II was organized to discuss in informal working sessions of the full committee all issues in the Informal Single Negotiating Text issued at the end of the last session in Geneva. The discussion proceeded on an article-by-article basis. In an attempt to expedite the work, a rule was adopted whereby silence on the part of any delegation would be interpreted as indicating support for the Geneva Single Negotiating Text and opposition to any amendments proposed. While small group consultations were possible, and did in fact take place (tuna, land-locked and geographically disadvantaged States), the committee working sessions each day left little time for such consultations. After six-and-one-half weeks of intensive work, the consideration of all Committee II articles was completed, and the Chairman commenced the preparation of a revised text. The clear overall impression of the debate was that Part II of the Geneva Single Negotiating Text was broadly acceptable.

The major contentious issues in Committee II faced by the Fourth Session were:

1. the juridical status of the economic zone as high seas; and
2. the access to the sea by land-locked States, and the access to the resources in the economic zones of States of a region by such States and geographically disadvantaged States of the region.

Other important issues on which there was significant division were:

1. delimitation of economic zone and continental shelf boundaries between opposite and adjacent States including the question of islands;
2. the question of coastal State authority over construction, design, equipment and manning standards for foreign vessels in the territorial seas, which is related to the Committee III pollution negotiations;

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3. highly migratory species;
4. resource rights for territories under foreign occupation or colonial domination.

It will also be necessary to do further work with regard to the continental shelf beyond 200 miles, although the basic framework of a solution seems to be apparent at this point: a precise definition of the outer limit combined with revenue sharing beyond 200 miles.

It is clear that delegations now have a better grasp of the overall Committee II package, though a number of issues are still outstanding.

A. Territorial Seas

There was continued broad support within the committee for a 12-mile territorial sea as a part of an overall, widely accepted package. Some coastal States continued, however, to press for 200 miles, or reserved positions on breadth pending clarification of coastal States' rights in the exclusive economic zone. Neither proposals for 200-mile territorial seas, nor those for extensive historic waters received much support. Provisions on baselines received general approval with minor exceptions. In the discussion of delimitation between opposite or adjacent States the distinction surfaced, which appeared later as well, between the use of equity and equidistance as the proper criterion.

B. Innocent Passage in the Territorial Sea

There was general support in committee for retaining the regime for innocent passage as set forth in the Geneva Single Negotiating Text. There was some attempt to limit the right of innocent passage, as a preliminary to the straits debate, but none of the major amendments received significant support. In addition, a group of States suggested amendments making the list of non-innocent acts explicitly non-exhaustive. Debate over whether the coastal State could adopt laws and regulations concerning the design, construction, manning and equipping of vessels in innocent passage in the territorial sea was inconclusive, as was the debate over the retention of provisions concerning the documentation of nuclear-powered ships. The former issue is a vessel-source pollution issue being negotiated in Committee III.

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C. Straits Used for International Navigation

With the exception of vocal objections by a small number of strait States, the discussion of these articles reflected a general willingness to accept the Single Negotiating Text. The majority of States indicated this by remaining silent on the issue. An initial attempt to delete the entire part and a suggestion that there be further consultations among interested parties received little support. As anticipated, a small number of states pressed for amendments which would have the result of transforming the transit passage regime to one of innocent passage. Some States pressed for provisions for State responsibility for loss or damage resulting from passage of ships. Both efforts generated little support.

D. The Exclusive Economic Zone

Debate on the exclusive economic zone articles of the Single Negotiating Text was extensive and foreshadowed the general debate on the nature and character of the economic zone as high seas which took place in connection with the high seas section. Strong efforts by land-locked and geographically disadvantaged States to secure access to economic zones on a regional basis also emerged in the debate. Maritime States sought amendments that would limit treatment of coastal State authority in the economic zone regarding pollution and scientific research to a cross reference to the work of Committee III. While there was widespread support for sovereign rights over resources, some coastal States sought to achieve broader jurisdiction tantamount to a territorial sea. The group of land-locked and geographically disadvantaged States strongly opposed the latter concept and proposed amendments that would ensure strong language regarding their rights of access to the living resources in the economic zones of States on a regional basis. This evoked equally strong coastal State reactions. Articles on fishing and surplus of coastal State fish stocks received little comment, while many States were still of differing views on regional arrangements for the management and conservation of highly migratory species. The article on anadromous species drew no substantial comment and appears broadly acceptable. The question of delimitation again received committee attention with a clear split between states favoring the median line and those preferring to place emphasis on special circumstances.

E. Continental Shelf

The primary issue in the Committee debate on the continental shelf involved the extent of coastal States jurisdiction.

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A number of States argued for limiting such jurisdiction to 200 nautical miles, while a number of States with broad margins pressed for jurisdiction over the full continental margin where it extends beyond 200 miles. Public debate and private conversations indicated emergence of wide support for a compromise including acceptance of coastal State jurisdiction beyond 200 miles to a precisely defined limit combined with sharing according to a treaty formula by the coastal State of revenues generated from exploitation of the mineral resources of the margin beyond 200 miles.

F. High Seas

The majority of the discussions on this topic were devoted to a thorough airing of the question of the juridical nature of the economic zone, with approximately three-quarters of the States present participating in the debate. States were evenly split on whether the exclusion of the economic zone from the high seas should be removed from Article 73, with corresponding changes in other relevant articles. The length and complexity of the debate showed a desire by many for some change in the article which would preserve the high seas status of the economic zone. Secretary Kissinger expressly stated that the economic zone remains high seas. Attempts were made by some delegations to find a compromise based upon an exclusion from the regime of the high seas of those coastal States' rights expressly provided for in the convention. Most other articles received little comment.

G. Living Resources Beyond the Economic Zone

The provisions of this part were for the most part acceptable. Some support was generated for amendments calling for coordination of management and conservation of living resources beyond the economic zone through regional, sub-regional or global organizations, and for minimizing conflicts between fishing within and outside the economic zone. In addition, some whaling States sought deletion of the reference in Article 53 to prohibitions or special limitations on exploitation of marine mammals.

H. Land-Locked State Access to the Sea

The land-locked States opened debate on this subject calling for the right of transit through the territories of transit States for the purpose of access to the sea, subject to terms and conditions to be set by agreement. Such proposals were met by strong opposition from coastal transit States seeking a more limited version, suggesting that the principle of reciprocity should in all cases apply.

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I. Archipelagic States

There was little support for changes in the Geneva Single Negotiating Text. Attempts to alter the size of the envelope enclosing an archipelago, along with those designed to extend the concept by changing the land-water ratio, received little support. Debate centered upon the length of permissible archipelagic baselines with general support for limits set forth in the text with a small number of exceptions permitted. Several States pressed for extension of the archipelago concept to archipelagos of continental States, but attracted little support.

J. Islands

This article was generally acceptable to the committee. The Geneva Single Negotiating Text provides that rocks which cannot sustain human habitation or economic life of their own shall not have an economic zone or continental shelf. A proposal to delete this reference drew strong, but not majority, support.

K. Enclosed and Semi-Enclosed Seas

The text of these articles providing for States bordering on enclosed or semi-enclosed seas to cooperate in meeting common problems seemed generally acceptable to most States provided that the duty was not strengthened, and perhaps weakened a bit. Proposals in this area tended to be attempts to adjust the texts to deal with limited, special situations, and these suggestions received only limited regional support.

L. Territories Under Foreign Occupation or Colonial Domination

Article 136 of the Geneva Single Negotiating Text would make special provisions for exercise of resource rights in certain categories of non self-governing territories. Discussion of this article tended to be highly politicized and there was considerable support on the one hand for revising the text to make it less discriminatory (i.e. inclusion of reference to associated States) and for extending it to include liberation movements on the other. There was also some recognition that the issues involved cannot be resolved in the Law of the Sea forum. Several compromise proposals were suggested for the Chairman's consideration.

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M. Landlocked State Access to Marine Resources

Minister Jens Evensen of Norway convened a group of interested States during the session to attempt to find an acceptable formula for Articles 57, 58 and 59 dealing with access of land-locked and geographically disadvantaged States to the living resources of the economic zones of coastal States of their region. A text was produced for submission to the Chairman, but significant disagreement on the issues remains.

IV. Committee III (Pollution and Scientific Research)

A. Protection of the Marine Environment

Objectives in this part of the LOS negotiations have been to establish effective environmental protection obligations with regard to all sources of marine pollution. In general, this would include standard-setting and enforcement rights for each source and, with the exception of land-based pollution, to require that domestic regulations be at least as effective as international regulations. In addition, much effort was devoted to finding a settlement on vessel-source pollution which would ensure effective enforcement of the regulations while not impinging on navigation. The negotiating process occurred mainly within the informal working group of the whole and through consultations conducted by Chairman Jose Louis Vallarta (Mexico).

An important initial decision was not to reopen the first 15 articles of the Geneva Single Negotiating Text which were previously negotiated. These cover the general obligations to prevent pollution, global and regional cooperation on pollution problems, technical assistance, monitoring, and environmental assessments. A few changes were made to these texts based on Evensen Group intersessional work. Article-by-article discussion then took place on Articles 16 through 19 and 21 through 25 with few changes being made to the Geneva Single Negotiating Text. These articles provide for the establishment and enforcement of regulations on land-based pollution, continental shelf pollution and ocean dumping and indicate that pollution from

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deep seabed exploration and exploitation of resources will be handled in Committee I. On the vessel-source pollution articles (20, 26-39), the discussion took place on an issue-by-issue approach. After general debate in the working group of the whole, real negotiation took place in an informal consulting group open to all countries. There was movement toward compromise on the part of both the coastal and maritime States. The tenor of the discussions permitted Ambassador Yankov to produce a new text which may be very close to a final treaty on most issues.

In the area of vessel-source pollution, three major aspects were addressed: coastal state regulations in the economic zone; enforcement generally against vessel-source pollution; and coastal State rights in the territorial sea.

With respect to economic zone regulations, most countries agree that there should only be generally applicable international regulations in the economic zone, although there would be special areas, defined by criteria in the treaty, in which more strict international discharge regulations would apply. In general, the criteria and regulations in these special areas would be the same as those in the 1973 IMCO Convention. In addition, the text contains an article giving coastal States standard-setting and enforcement rights in ice-covered areas within the limits of the economic zone.

On enforcement of international discharge regulations, an accommodation has been generally supported along the following lines:

(a) strict flag State obligations to take effective enforcement action;

(b) port State enforcement rights to prosecute vessels in its ports for international discharge standard violations regardless of where they occur;

(c) a coastal State right to take enforcement action in the economic zone against flagrant or gross violations of international discharge regulations causing major damage or threat of damage to coastal State interests;

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(d) a flag State right to pre-empt prosecutions for violations beyond the territorial sea by other States unless the flag State has disregarded its enforcement obligations or the violation has caused major damage; and

(e) a series of safeguards including release on bond of vessels, liability for unreasonable enforcement, and sovereign immunity.

With regard to the territorial sea, a major split remains. The other major maritime powers (USSR, Japan, U.K. and most Western Europeans) argue that the coastal State should not be authorized to establish construction, design, equipment or manning regulations more strict than international regulations. Many coastal States and the U.S. support complete coastal State authority subject only to the right of innocent passage. The U.S. view is already set out in domestic legislation in the Ports and Waterways Safety Act. The Third Committee text supports the U.S. view while the Second Committee text supports the maritime viewpoint, thus requiring later resolution of the issue.

The major issue remaining to be resolved is coordination of the Committees II and III texts on territorial sea jurisdiction. The coastal State rights to set manning, equipment, design and construction standards within the territorial sea will not see final resolution until such coordination has taken place.

#### B. Marine Scientific Research

Committee III completed the first article-by-article reading of the Geneva Single Negotiating Text on marine scientific research (MSR) and on Technology Transfer. The Chairman of the informal working group, Cornel Metternich of the FRG, repeatedly stressed that the purpose of the sessions was to obtain reactions to the SNT in order to aid Chairman Yankov in redrafting the text.

With these ground rules, the main focus of the marine scientific research discussions was Chapter III of the Geneva text dealing with research in the economic zone and on the continental shelf. The U.S. approach was that coastal State interests in the economic zone should be protected through a series of agreed obligations upon the researcher. Many developed countries sought consent for all

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research in the economic zone. The Geneva text set forth a mixed regime in the economic zone requiring consent for resource-oriented research and an obligations regime for research not oriented toward resources. This distinction between categories of research came under by thirty-six developing countries who claimed such a distinction was impractical and that consent should apply to all research activities in the economic zone. Most other countries defended the distinction concept as the only practical basis for a compromise settlement on the question of MSR. In an attempt to find a reasonable accommodation, Secretary Kissinger stated a willingness to accept a reasonable distinction approach, subject to compulsory dispute settlement.

An important element of a regime for marine scientific research based on a distinction between resource and non-resource oriented research is the question of who decides the orientation of the research. Mexico continued to seek compulsory conciliation with the ultimate right in the coastal State to decide the issue. Many developing States who had attacked the proposal to distinguish between resource and non-resource oriented research indicated that the Mexican approach would make this distinction concept more acceptable. Many of the supporters of the distinction concept, on the other hand, said it was crucial to have disputed questions on the nature of the research subject to binding third-party settlement. There was no clear resolution of the issue in the informal meetings of the Committee.

Metternich, in his report to Chairman Yankov, referred to informal negotiations that had occurred during the session and offered the following personal conclusion:

(a) a compromise will not be reached on a text which required consent in all cases, nor in a text where consent is never required. A mixed regime subjecting some research activities to consent and some to an obligation regime appeared to be the only viable basis for compromise;

(b) while there was no agreement as to the complete list, it appeared that at least the following should require consent: resource-oriented research, although there was no agreement as to the proper terminology to describe this form of research; drilling or the use of explosives; and utilization of structures referred to in Article 48 of Part II;

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(c) central to the regime was the question of dispute settlement with no compromise on this issue readily apparent.

The revised Single Negotiating Text, however, reflects a different approach from those discussed in the negotiation. It requires consent for all scientific research in the economic zone but provides that consent shall not be withheld unless it is resource oriented, involves drilling and the use of explosives, or the utilization of artificial islands or installations subject to coastal State jurisdiction. The new text also provides that disputes regarding research will first be referred to experts to aid the parties in reaching agreement, but if those efforts are not successful, it will be referred to the binding dispute settlement procedures set forth in Part IV.

#### C. Transfer of Technology

The discussion on transfer of technology was lengthy but basically inconclusive. Several attempts were made to ensure that the text reflected the view that transfer of technology was an obligation of developed States not subject to normal economic principles. Contrasted to this view was the approach that all transfer of technology involving technology in the commercial sector must protect the interest of both the recipient and the supplier of technology.

### V. Settlement of Disputes

#### A. General Objectives

Effective provisions for the binding settlement of disputes arising from the interpretation or application of the LOS Convention are an essential part of a negotiated package. Without a provision for compulsory settlement of disputes, the substantive provisions of the Convention would be subject to unilateral interpretation and the delicate balance of rights and duties achieved in a Convention would be quickly upset. Secretary Kissinger emphasized the importance of this in his April 8 speech.

#### B. Background

An Informal Working Group on Settlement of Disputes was organized at Caracas, and at the end of the 1975 Geneva

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session this Group submitted a text to the President of the Conference. Using that text and resolving some of the issues it left open, the President prepared and circulated a Single Negotiating Text on dispute settlement in July 1975.

In an effort to blend together the conflicting approaches which were discussed at Caracas and Geneva --one which would provide compulsory dispute settlement only for certain disputes; the other which would apply compulsory dispute settlement to all disputes --President Amerasinghe provided in his first text for a new Law of the Sea Tribunal to resolve disputes involving the interpretation or application of the Convention (unless the parties to the dispute agreed to arbitration or the International Court of Justice); he also provided for special procedures in the area of fisheries, pollution, and scientific research disputes and for various exceptions to compulsory dispute settlement, including one which deals with the pivotal question of dispute settlement in the economic zone.

### C. Plenary Debate

Dispute Settlement was taken up in a plenary meeting of the Conference for the first time during the fourth session. In six days of debate, a wide range of views were expressed by seventy-two speakers. Each speaker acknowledged the need for a dispute settlement system, but discussion of the scope and competence of the system disclosed widely divergent viewpoints on basic details. Some States advocated a comprehensive system that would apply to all disputes arising out of the interpretation and application of the Convention. Some States supported a comprehensive system with a provision for limited and carefully defined exceptions from the jurisdiction of the system. And some States proposed that compulsory dispute settlement should be totally excluded from the economic zone, although many of those States also expressly acknowledged that navigation and overflight disputes in the zone should be subject to compulsory dispute settlement.

Many delegations recognized that disputes arising out of deep seabed mining activities, particularly disputes over contract matters, would have unique features, and accordingly supported specialized procedures for such disputes. Some favored a completely independent Seabed

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Tribunal which would be an organ of the Seabed Authority with authority to make binding, final decisions regarding all disputes arising out of the activities in the area pursuant to Part I of the Convention. Others suggested that an appellate relationship should be established between the Seabed Tribunal and the Law of the Sea Tribunal.

Speakers in the plenary also discussed the structure of the dispute settlement system. Some States advocated arbitration as the sole mode of settling disputes; others advocated use of the International Court of Justice; and others supported the creation of a new Law of the Sea Tribunal (although some delegations opposed any new tribunal).

Some States advocated specialized procedures to handle disputes related to fishing, navigation, and research; other States advocated a system with general jurisdiction for handling all disputes. In the discussion of the type of forum or fora to be used, there was substantial support for a provision that would give a Contracting Party a choice among three tribunals (an arbitral tribunal, the Law of the Sea Tribunal, or the International Court of Justice). A Party's declaration at the time of ratification would determine the forum before which that Party could be brought by a claimant in a dispute.

At the close of the plenary debate, President Amerasinghe obtained approval for his proposal to produce a revised text based on the remarks in plenary and any suggestions subsequently submitted informally to him.

D. The Basic Issues

In the dispute settlement section of the Convention, the question of application of compulsory third-party dispute settlement in the economic zone is the most difficult and complex issue. States opposed to excluding compulsory dispute settlement from the zone contend that the Convention system must take account of both coastal and other States rights in the zone. The success of the conference will depend on designing a provision that will accommodate both coastal State interest in resource management discretion and the major rights and interests of other States in the economic zone.

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E. Group of 77

The Group of 77 undertook a serious and detailed study of dispute settlement for the first time during this session. A twelve member "contact group" conducted extensive discussion and debate over a period of several weeks. A position paper was produced by this contact group for the Group of 77.

F. Revised Single Negotiating Text

The fundamental question of protecting the rights of coastal States and the rights of other States in the economic zone is treated in Article 18. Subject to certain exceptions including interference with navigation and overflight, the new Article 18 excludes from the Convention system disputes related to the exercise of sovereign rights, exclusive rights or exclusive jurisdiction of a coastal State.

The new text must be carefully studied. If the economic zone is not to become the functional equivalent of a territorial sea, the dispute settlement system must provide adequate protection for the rights of both coastal and other States.